

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

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| In the Matter of |) | |
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| Amendment of Part 20 and 24 of the |) | WT Docket No. 96-59 |
| Commission's Rules -- Broadband |) | |
| PCS Competitive Bidding and the |) | |
| Commercial Mobile Radio Service |) | |
| Spectrum Cap |) | DOCKET FILE COPY ORIGINAL |
| |) | |
| Amendment of the Commission's |) | GN Docket No. 90-314 |
| Cellular PCS Cross-Ownership Rule |) | |

To: The Commission

REPLY COMMENTS

Cook Inlet Region, Inc. ("CIRI"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, submits these Reply Comments in response to the above-captioned Notice of Proposed Rule Making ("NPRM"), adopted and released by the Commission on March 20, 1996.

In its Comments, CIRI outlined ways in which the Commission can ensure that its remaining broadband personal communications services ("PCS") auctions are competitive and reliable. In light of the unexpectedly high costs of licenses in the broadband PCS C Block auction, CIRI urged the Commission to examine its preference programs for entrepreneurial companies in general, and for small businesses and businesses owned by member of minority groups in particular, to ensure that they are as effective as possible in opening the Commission's auctions to new bidders. A number of commenters shared CIRI's views.

I. SCOPE OF ENTREPRENEURIAL PREFERENCES

A. Preferences in the D, E, and F Blocks

Many parties urged the Commission to make its preferences for entrepreneurial companies available to bidders in the D, E, and F Block auctions.¹ Moreover, several commenters demonstrated that installment payment plans alone were insufficient to encourage meaningful small business competition in the unrestricted D and E Block auctions.² Rather, as CIRI indicated, installment payment terms are of little use if there is no license for which to pay. If the Commission plans to encourage entrepreneurial entities to participate in each of the remaining broadband PCS auctions, bidding credits for smaller companies should be a principle component of the D, E, and F Block auction rules.

Some larger companies opposed the extension of measures for smaller businesses to the D and E Block auctions. Telephone and

¹ See, e.g., Comments of Ad Hoc Rural PCS Coalition at 9-10; Airlink, L.L.C. at 11; Antigone Communications Limited Partnership at 7; DCR Communications, Inc. at 10; Devon Mobile Communications, L.P. at 12-13; Gulfstream Communications, Inc. at 3-4; Iowa, L.P. at 2; KMTel, L.L.C. at 6; Mountain Solutions at 7; North Coast Mobile Communications, Inc. at 12; PCS Development Corporation at 8-10; PersonalConnect Communications, L.L.C. at 2-3; Phoenix, L.L.C. at 3; Rendall and Associates at 7, 11; Telephone Electronics Corporation at 12; U.S. Intelco Wireless Communications, Inc. at 6; and Virginia PCS Alliance, L.C. at 6-7.

² See, e.g., Comments of Ad Hoc Rural PCS Coalition at 9-10; DCR Communications, Inc. at 10; Gulfstream Communications, Inc. at 3-4; Iowa, L.P. at 2; KMTel, L.L.C. at 6; PCS Development Corporation at 8-10; PersonalConnect Communications, L.L.C. at 2-3; Phoenix, L.L.C. at 3; Rendall and Associates at 7, 11; U.S. Intelco Wireless Communications, Inc. at 6; and Virginia PCS Alliance, L.C. at 6-7.

Data Systems, Inc., for example, argued that the Commission has set aside the C and F Blocks for bidding by entrepreneurial companies and that the measures offered for those auctions should not be made available elsewhere.³ As PCS Development Corporation noted, however, "The Commission, by channelling small businesses to a limited number of channels, affords larger telecommunications companies an opportunity to acquire more spectrum with substantially less competition."⁴ The Commission can substantially increase competition for all broadband PCS licenses by encouraging responsible smaller companies to participate in each of the remaining auctions. To do that, however, the Commission must extend entrepreneurial preferences to each of the unrestricted auctions.

B. Retain Control Group Equity Options

CIRI also urged the Commission to utilize its Control Group Minimum 25 and 50.1 Percent Equity Options in the D, E, and F Block auctions. The Commission designed the Control Group Equity Options to facilitate investment in smaller companies that — at first — might not be able to compete against more established telecommunications companies. Some parties argued, however, that the Commission should prohibit investments in entrepreneurial companies by entities that would not qualify as entrepreneurs.⁵

³. Comments of Telephone and Data Systems, Inc. at 8.

⁴. Comments of PCS Development Corporation at 9.

⁵. See, e.g., Comments of Mountain Solutions at 4; National Telephone Cooperative Association at 4; Telephone Electronics Corporation at 9.

Although CIRC supports the efforts of the Commission to see that its auctions are not dominated by large, entrenched telecommunications companies, the Commission's Control Group Equity Options are critical to the ability of entrepreneurial companies to raise capital.⁶ In particular, the Commission's Control Group 50.1 Percent Equity Option requires a smaller bidder to retain a substantial equity stake in a broadband PCS venture, thereby promoting responsible bidding while helping to finance license build-out. These equity investment models are critical both in the entrepreneurs' blocks and in the unrestricted D and E Block auctions.

C. Increase Up Front Payments and Downpayments

Although CIRC encouraged the Commission to extend measures for entrepreneurial companies in the remaining auctions, CIRC also urged the Commission to increase entrepreneurial upfront payments and downpayments to ensure that the auction results are reliable. Other commenters made similar proposals. AT&T Wireless Services, Inc. suggested raising upfront payments to \$0.10 per MHz per pop,⁷ while Airlink, L.L.C. and Go Communications Corporation argued in favor of upfront payments keyed to ultimate bid amounts.⁸ Similarly, Sprint Corporation urged the Commission to increase the downpayment for

⁶. See Comments of Airlink, L.L.C. at 14; Devon Mobile Communications, L.P. at 6-8; Sprint Corporation at 3.

⁷. Comments of AT&T Wireless Services, Inc. at 7-8.

⁸. Comments of Airlink, L.L.C. at 8; Go Communications Corporation at 1.

entrepreneurs to 20 percent of their winning bids⁹ and PersonalConnect Communications, L.L.C. suggested a 25 percent requirement.¹⁰ CIRI urges the Commission to raise the upfront payment for entrepreneurs at least to \$0.02 per MHz per pop and to raise the downpayment for entrepreneurs to 30 percent of their winning bids.

II. LIMITATIONS ON LARGE C BLOCK WINNERS

A. Restrict Preferences for C Block Bidders That Win Large Amounts of Spectrum

In its Comments, CIRI urged the Commission to limit the availability of Federally-funded preferences for bidders and investors that win a large amount of spectrum in the C Block auction. These parties are no longer "small," and continuing to offer preferences to them would reduce opportunities for other entrepreneurial bidders and limit the Commission's ability to say that it disseminated licenses among a wide variety of applicants. Moreover, allowing the larger C Block winners to continue to receive preferences in the remaining PCS auctions increases government debt to highly-leveraged "smalls" that will owe such large sums to the public that the results of default will be material.

⁹. Comments of Sprint Corporation at 4.

¹⁰. Comments of PersonalConnect Communications, L.L.C. at 3.

CIRI specifically proposed that bidders and their attributable investors¹¹ that win C Block licenses covering more than 2 percent of the national population — approximately 5.05 million pops — should not be offered preferences in the remaining broadband PCS auctions. Similarly, Airlink, L.L.C. proposed a 27 million pop limit on licenses that may be won in the F Block auction¹² and Rendall and Associates proposed a 5 million pop limit for entrepreneurial preferences.¹³ CIRI urges the Commission to restrict future preferences for companies that utilized Federal assistance to purchase C Block spectrum covering more than 2 percent of the nation.

B. Include Value of C Block Licenses in F Block Assets

CIRI also urged the Commission to include the value of any licenses won in the C Block auction in the total assets calculation for admission to the F Block auction. By including the costs of C Block licenses in applicants' F Block assets calculations, the Commission will insure that smaller companies benefit from the set-aside F Block auction. Airlink, L.L.C. supported this provision, noting that a limited number of C Block

¹¹. CIRI urges the Commission to employ the definition of licensee used to implement the Commission's 40 MHz broadband PCS spectrum cap. See 47 C.F.R. § 24.229(c). This definition would extend the restriction to attributable investors in large C Block winners and limit their ability to access government benefits through multiple "small" businesses.

¹². Comments of Airlink, L.L.C. at 4-7.

¹³. Comments of Rendall and Associates at 7.

bidders effectively have outgrown the entrepreneurs' blocks by virtue of their C Block purchases.¹⁴

Commenters such as NextWave Telecom, Inc. and Omnipoint Corporation, however, argued that all C Block bidders should automatically be eligible for the F Block auction.¹⁵ In particular, NextWave argued that the Commission historically has linked the C and F Blocks and that the Commission's Rules otherwise permit C Block licensees to acquire entrepreneurs' block licenses without jeopardizing their ongoing entrepreneurial status.¹⁶ What NextWave ignored, however, is that the Commission instituted its entrepreneurs' blocks eligibility rules because "small entities stand little chance of acquiring licenses in these broadband auctions if required to bid against existing large companies."¹⁷ While NextWave might have begun the C Block auction as a small start-up company, its considerable buying-power makes clear that it has outgrown the entrepreneurs' blocks. NextWave is utilizing the set-aside C Block to purchase substantial assets; the purpose of the set-aside F Block will not be served if NextWave is permitted to bid there without regard to those assets.

¹⁴. Comments of Airlink, L.L.C. at 10-11.

¹⁵. Comments of NextWave Telecom, Inc. at 3-5; Omnipoint Corporation at 5-6.

¹⁶. Comments of NextWave Telecom, Inc. at 4-5.

¹⁷. Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fifth Report and Order, 9 FCC Rcd 5532, 5585 (1994).

III. RETAINING THE CELLULAR-PCS CROSS-OWNERSHIP RULE

CIRI also urged the Commission to retain its cellular-PCS cross-ownership rule if possible, and a number of commenters agreed.¹⁸ In particular, DCR Communications noted that cellular licensees obtained their 25 MHz cellular spectrum without charge and can add to their existing systems at a much lower cost than it takes to construct a new wireless network.¹⁹ Notwithstanding the arguments of some cellular providers that eliminating the cross-ownership rule is appropriate,²⁰ the cross-ownership limitation will help growing companies to enter the industry and will foster new service offerings for consumers. By retaining the cross-ownership rule — and by expanded measures for true entrepreneurial businesses — the Commission will increase its ability to disseminate licenses among a wide variety of applicants.

IV. EXAMINING MINORITY PREFERENCES

Finally, in its comments CIRI reviewed the strict scrutiny analysis to be applied to the Commission's minority preferences under Adarand Constructors v. Pena, 115 S.Ct. 2097 (1995), and the state of the record before the Commission in support of those

¹⁸. See, e.g., Comments of DCR Communications, Inc. at 12-15; Mountain Solutions at 11; North Coast Mobile Communications, Inc. at 16; Rendall and Associates at 12; Sprint Corporation at 9; and Telephone Electronic Corporations at 14.

¹⁹. Comments of DCR Communications, Inc. at 13.

²⁰. See, e.g., Comments of AT&T Wireless Services, Inc. at 9; Cellular Communications of Puerto Rico, Inc. at 5; Cellular Telecommunications Industry Association at 2, 5-11; and GTE Service Corporation at 6-10.

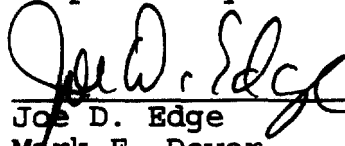
preferences. CIRI acknowledged the difficult judgments facing the Commission in this regard, but urged the Commission to retain its minority preferences if possible under the heightened standard. Few other commenters unequivocally supported proceeding with race-based measures.

In the final analysis, the ultimate goal of the Commission's minority preference regime might be served by extending the preferences for entrepreneurial companies to the D, E, and F Blocks, and by limiting eligibility for those preferences as described here. CIRI urges the Commission to review its records on minority preferences and the participation of small, minority-owned businesses in each of the Commission's auctions to see if this is the case. The Commission has crafted an innovative minority preference scheme that should be given a chance to succeed. A realistic assessment of the record before the Commission, however, could mitigate in favor of a more narrow, but effective, preference regime.

V. CONCLUSION

For these reasons, CIRI urges the Commission to adopt measures to increase opportunities for responsible small bidders in the remaining auctions, to restrict preferences for large C Block auction winners, to retain its cellular-PCS cross-ownership rule, and to examine its entrepreneurs' block minority preference provisions.

Respectfully submitted,



Joe D. Edge
Mark F. Dever

DRINKER BIDDLE & REATH
901 Fifteenth Street, NW
Suite 900
Washington, DC 20005
(202) 842-8800

Attorneys for
COOK INLET REGION, INC.

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CERTIFICATE OF SERVICE

I, Catherine S. Brewer, hereby certify that a true and correct copy of the foregoing Reply Comments of Cook Inlet Region, Inc. was served this 25th day of April, 1996, via first class mail, postage prepaid, on the following:

David Cosson
L. Marie Guillory
NATIONAL TELEPHONE
COOPERATIVE ASSOCIATION
2626 Pennsylvania Avenue, NW
Washington, DC 20037

Cathleen A. Massey
AT&T WIRELESS SERVICES, INC.
1150 Connecticut Avenue, N.W.
4th Floor
Washington, DC 20036

Mark J. Tauber
Mark J. O'Connor
PIPER & MARBURY L.L.P.
1200 19th Street, N.W.
Washington, DC 20036

Ashton R. Hardy
HARDY AND CAREY, L.L.P.
111 Veterans Boulevard
Suite 255
Metairie, LA 70005

Janice Obuchowski
HALPRIN, TEMPLE,
GOODMAN & SUGRUE
1100 New York Avenue
Suite 650 East
Washington, DC 20005

Andre J. Lachance
GTE SERVICE CORPORATION
1850 M Street, N.W.
Suite 1200
Washington, DC 20036

George Y. Wheeler
KOTEN & NAFTALIN
1150 Connecticut Avenue, N.W.
Washington, DC 20036

Jay L. Birnbaum
David H. Pawlik
SKADDEN, ARPS, SLATE, MEAGHER
& FLOM
1440 New York Avenue, N.W.
Washington, DC 20005

Jeffrey S. Bork
U S WEST, INC.
1020 19th Street, N.W.
Suite 700
Washington, DC 20036

Michael F. Altschul
Randall S. Coleman
Andrea D. Williams
CELLULAR TELECOMMUNICATIONS
INDUSTRY ASSOCIATION
1250 Connecticut Ave., NW, Suite 200
Washington, DC 20036

William R. Richardson, Jr.
Lynn R. Charytan
WILLIAM, CUTLER & PICKERING
2445 M Street, N.W.
Washington, DC 20037

R. H. Moore
U.S. INTELCO WIRELESS
COMMUNICATIONS, INC.
P. O. Box 8
Olympia, WA 98507

Leonard J. Kennedy
Richard S. Denning
DEVON MOBILE
COMMUNICATIONS, L.P.
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, DC 20036

Jay C. Keithley
Nancy R. McCabe
SPRINT CORPORATION
1850 M Street, N.W.
Suite 1100
Washington, DC 20036

Tom A. Alberg
PERSONALCONNECT
COMMUNICATIONS, L.L.C.
2300 Carillion Point
Kirkland, WA 98033

Steven A. Zecola
GO COMMUNICATIONS
CORPORATION
201 N. Union St., Suite 410
Alexandria, VA 22314

David S. Rendall
RENDALL AND ASSOCIATES
5000 Falls of Neuse Road
Raleigh, NC 27609

Shelley Spencer
AIRLINK, L.L.C.
3000 K Street, N.W.
Suite 300
Washington, DC 20007

Gerald S. McGowan
Terry J. Romine
LUKAS MCGOWAN NACE &
GUTIERREZ, CHARTERED
1111 19th Street, N.W., Suite 1200
Washington, DC 20036

James U. Troup
L. Charles Keller
ARTER & HADDEN
1801 K Street, N.W., Suite 400K
Washington, DC 20006

Mark J. Golden
Robert R. Cohen
PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION
500 Montgomery Street, Suite 700
Alexandria, VA 22314

R. Michael Senkowski
Katherine M. Holden
Eric W. DeSilva
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, DC 20006

James F. Ireland
Theresa A. Zeterberg
COLE, RAYWID & BRAVERMAN, LLP
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, DC 20554

David J. Kaufman
Lorretta K. Tobin
BROWN NIETERT &
KAUFMAN, CHARTERED
1920 N Street, N.W., Suite 660
Washington, DC 20036

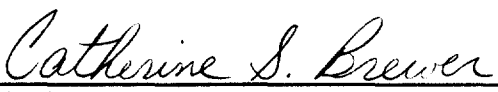
Thomas E. Taylor
Douglas E. Hart
FROST & JACOBS
2500 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202

Lawrence R. Sidman
VERNER, LIFFERT, BERNHARD,
MCPHERSON AND HAND,
CHARTERED
901 15th Street, N.W., Suite 700
Washington, DC 20005

Carressa D. Bennet
Michael R. Bennet
BENNET & BENNET, PLLC
1831 Ontario Place, N.W., Suite 200
Washington, DC 20009

Henry A. Solomon
Melodie A. Virtue
HALEY BADER & POTTS P.L.C.
4350 North Fairfax Drive, Suite 900
Arlington, VA 22203

Charles H. Carrathers III
HUNTON & WILLIAMS
951 East Byrd Street
Richmond, VA 23219



Catherine S. Brewer